



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: April 11, 2011

TO: TAC Ad Hoc Subcommittee on the Draft Abandoned Properties Ordinance

FROM: Robert Vacchi, Deputy Director, Neighborhood Code Compliance Division,
Development Services Department
Diane Silva-Martinez, Chief Deputy City Attorney, City Attorney's Office

SUBJECT: TAC Recommended Revisions to the Draft Abandoned Properties Ordinance

Below is staff's response to TAC's recommended revisions dated February 9, 2011:

1. *"The city's challenges with abandoned properties appear to be more a function of the city's lack of code enforcement officers and resources than they do with a lack of code enforcement authority under the existing municipal code."*

Staff response: Presently a residential or commercial structure without boards on the windows or doors may remain vacant indefinitely, much to the frustration of the neighbors. Additional resources would not change this. The prime example is a restaurant in Hillcrest which has remained vacant for over 20 years. The existing Vacant Structures Ordinance only applies to vacant structures which are unsecured or which have boards on the windows or doors. As abandoned and vacant structures which are not boarded do not come under the ordinance nor the City's Vacant Properties Program, there is no mechanism or requirement that the owner files a "Statement of Intent" Form which provides information regarding a contact person, maintenance plan, or a plan to put the property to productive use. Once the Form is filed, the City monitors the owner's progress and efforts to implement the Statement of Intent. Best practices by over 80 cities in California and most of the larger cities nationally, require all vacant structures to be registered after 30 days, pay an annual monitoring fee and require proper maintenance.

2. *"Lack of identifiable need for the Abandoned Properties Ordinance and the possible redundant nature of the ordinance be resolved prior to the city advancing these municipal code changes any further."*

Staff response: The identifiable need for the ordinance is articulated in the two Reports to the Committee on Land Use and Housing by the City Attorney dated January 27, 2010 and September 9, 2010. Staff has reviewed the San Diego Municipal Code (SDMC) for redundancy and has determined that none exists.

3. *“Page 2, section 54.03.02, Definitions: Remove items (1) and (3). There is no basis for classifying idled construction projects or structures vacant for more than 2 years that are otherwise free of code violations as abandoned properties.”*

Staff response: As to item (1), the basis for classifying abandoned remodel projects as public nuisances is outlined in detail on pages 2-4 of the City Attorney’s Report to the Committee on Land Use and Housing dated January 27, 2010. However, abandoned remodel projects will actually be removed from the Abandoned Property Ordinance due to recent discussions with the Building Official that it would be more efficient to include the proposed regulatory language as part of the adoption of the 2010 Building Code this year.

As to item (3), the basis for including structures which are vacant for more than two years, irrespective of blight and nuisance activity is articulated in the Reports to the Committee on Land Use and Housing by the City Attorney dated January 27, 2010 and September 9, 2010. The Council Committee adopted staff’s recommendations to include all structures with a vacancy of over two years to be included under the City’s successful Vacant Properties Program which assists and motivates owners to put properties to productive use. This item specifically addresses the initial concern of Council regarding how structures can be left vacant indefinitely.

4. *Page 3, section 54.03.02, Definitions: Revise item (4) to state the following: a vacant structure where ~~which has been maintained vacant for less than two years and~~ blight or nuisance violations exist at the property as determined by the Director*

Staff response: This suggested revision would only allow the City to address vacant structures with blight and nuisance activity. The direction from Council was to address long term vacancy irrespective of blight and nuisance activity.

5. *Page 3, section 54.03.02, Definitions: Remove item (5) (The language in Item 5 states: “a vacant structure which is unsecured or boarded irrespective of length of vacancy”)*

Staff response: Item 5 is not an amendment. Vacant structures which are unsecured or boarded are presently regulated under the Municipal Code and have been part of the definition of Vacant Structures since 1996. The existing ordinance and program was developed in the late 1990’s pursuant to a task force which included the Real Estate Industry, Building Industry, and numerous stakeholders. The Council Committee’s direction was to expand the current regulatory scheme, not to eliminate what is currently regulated. SDMC section 54.0301 states in the Declaration of Purpose of the Vacant Structure Ordinance that:

The Council of the City of San Diego finds and declares that:

- (a) Structures that are vacant and unsecured or boarded attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities.
- (b) Structures that are vacant and not properly secured are extremely vulnerable to being set on fire by unauthorized persons.
- (c) Structures that are vacant and unsecured or boarded are a blight and cause deterioration and instability in neighborhoods.

- (d) Structures that are vacant and unsecured or boarded pose serious threats to the public's health and safety and therefore are declared to be public nuisances.
- (e) Immediate abatement and rehabilitation of these structures is necessary and can be accomplished by using the judicial or administrative procedures found in this Code.

6. *Page 3, section 54.03.02, Definitions: Revise item (6), as follows: "a vacant structure, and the property is under a current Notice of Default, Notice of Trustee's Sale, pending Tax Assessor's Lien Sale, or has been the subject of a Foreclosure sale where the title was retained by the Beneficiary of a Deed of Trust involved in the Foreclosure, or has been transferred under a Deed in Lieu of Foreclosure."*

Staff response: Due to direction by Council Committee to hold banks and financial institutions responsible for foreclosed vacant properties, this language was included, especially since trustee sales are often continued numerous times and the foreclosure process becomes protracted. Most cities nationwide have this same language in their vacant property registration ordinances which require registration fees, the identification of a contact person, and proper maintenance of the property. Beneficiaries or trustees who hold an interest or deed of trust on a foreclosed property are responsible to register and properly maintain the property at the point of the Notice of Default as they hold equitable title. In addition, the bank or financial institution is legally liable pursuant to the definition of "Responsible Person" found in SDMC 11.0210 which states, "Responsible Person means a person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term "Responsible Person" includes but is not limited to a property owner, tenant, *person with a Legal Interest* in real property or person in possession of real property." [Emphasis added.] "Legal Interest" is also defined in section 11.0210 as follows: "...any interest that is represented by a document such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument which is recorded with the County Recorder."

7. *Page 5, section 54.03.02, Definition of a "Vacant Structure"*

Revise the definition of vacant structure as follows:

"Vacant Structure" means any structure or building that is ~~unoccupied~~ not being used or occupied by the owner or renters, is not for sale or rent, or is occupied by unauthorized persons. A commercial vacant structure shall be deemed vacant if there is no lawfully permitted business operating within the structure or building ~~on a daily basis, unless, due to the nature of the business, the Director approves its operation on a less frequent basis.~~

Staff response: Again, the direction of the Council Committee is to enhance the present Vacant Structures Ordinance, not to reduce the type of structures regulated. There should not be an exemption for an unoccupied structure which is for sale or rent. Many vacant properties for sale or rent are some of the most problematic properties for the police and staff due to ongoing crime and lack of maintenance. As to the second sentence, the language regarding uses in commercial structures was drafted to ensure there was not a loophole in the law whereby an owner of a

vacant commercial structures might finally establish a use and occupy the structure but the use is not one permitted under the zone. Another loophole staff wanted to address is where the commercial structure was used only once or twice a month and there was no actual ongoing use. The wording however, gives the Director to allow less frequent use of the building due to the specific nature of the business.

8. Page 9, section 54.03.07(h): Revise this section as follows:

“The Director shall follow the Administrative Abatement Procedures. . . If however the abatement involves ~~a vacant structure~~ an abandoned property which is a single family dwelling, then the time frame for compliance shall be 45 ~~15~~ calendar days ~~in accordance with California Health and Safety Code section 17980.9(b)(1).~~”

Staff response: Health and Safety Code section 17980.9 is a state code. It is the opinion of the City Attorney that if a nuisance exists in a vacant structure which is a substandard single family dwelling, then the time frame articulated in Health and Safety Code section 17980.9 must be followed. It is in the public’s best interest to abate the nuisance as quickly as possible. Abatement in this section means cleaning the interior of the structure, removing waste, rubbish, storage, weeds, etc from the premises, and properly boarding the structure. 45 days would be too long a period and allow crime to continue at the property. This section is not a proposed amendment but currently exists in the Code and property owners or the City are regularly able to meet the deadline or are given extensions as appropriate.

9. Page 9, section 54.03.08: Revise this section to be termed “Standards for Boarding an Abandoned Vacant Structure” and replace the term “vacant structure” with “abandoned property” throughout.

Staff response: Staff is not clear on the reason for the revision. When a Vacant Structure is required to be boarded by the City because it is unsecure, this section lays out the appropriate standards for boarding. It does not infer that all vacant structures must be boarded.

10. Page 10, section 54.03.08(a)(8) – value of posting signs.

Staff response: the value of posting signs is outlined in the attached article published in the San Diego Association of Realtors Newsletter dated August 2009. The proposed ordinance does not automatically require the posting of a sign but states the Director *may* require it as part of an Abatement Notice. If the authority to require signs is removed from the ordinance, staff can still explain to owners the value of posting signs and leave it as a voluntary step if they determine it to be useful. Again note that most cities do require that signs be posted on vacant properties.

11. Page 12, section 54.03.13: *Duty to File Statement of Intent* (TAC is not clear why it is proposed and asserts it is not legally valid)

Staff response: The Statement of Intent Form is not a new requirement. It has been a requirement under the Municipal Code since 1996 for owners of unsecured or boarded vacant properties to file a Statement of Intent and was included as a recommendation from the City’s Vacant Properties Task Force which included the Real Estate Association and Building Industry.

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This requirement continues to be invaluable as it allows a dialogue with the property owner and requires the owner to list necessary contact information and articulate a plan for rehabilitation and eventual use of the property.

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